Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-941

PAUL H. GIBSON, SHERIFF OF GUILFORD COUNTY,

Petitioner,

vs.

VOULYNNE SMALL,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INDEX

	Page
Table of Citations	ii
Questions Presented	2
Conclusion	3

TABLE OF CITATIONS

CASES:	Page
Citizens Bank of Michigan City v. Opperman, 249 U.S. 448 (1918)	2
Department of Banking v. Pink, 317 U.S. 264 (1942)	2
Gypsy Oil Company v. Escoe, 275 U.S. 498 (1927)	2
Morris v. United States, 270 U.S. 151 (1925)	2
N.L.R.B. v. Mackay Radio and Telegraph Co., 304 U.S. 333 (1937)	2
U.S. v. Seminole Nation, 299 U.S. 417 (1936)	2

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Petitioner Paul H. Gibson respectfully replies to the respondent's brief in opposition to his petition for writ of certiorari, by showing the Court the following:

QUESTIONS PRESENTED

I.

WHETHER THE PETITION FOR CERTIORARI SHOULD BE DISMISSED FOR NOT HAVING BEEN FILED WITHIN THE TIME ALLOWED?

The decision of the United States Court of Appeals for the Fourth Circuit in this matter was filed on September 21, 1976. Within fourteen days thereafter, the petitioner filed with the United States Court of Appeals for the Fourth Circuit a petition to rehear the cause. On October 21, 1976, an order was entered denying the petition to rehear. A petition for a writ of certiorari was then docketed in this court on January 6, 1977.

This Court has consistently held that a timely-filed petition for a rehearing in the Court of Appeals tolls the running of the ninety day limit within which to petition for a writ of certiorari. Department of Banking v. Pink, 317 U.S. 264 (1942); N.L.R.B. v. Mackay Radio and Telegraph Co., 304 U.S. 333 (1937); U.S. v. Seminole Nation, 299 U.S. 417 (1936); Gypsy Oil Company v. Escoe, 275 U.S. 498 (1927); Morris v. United States, 270 U.S. 151 (1925); Citizens Bank of Michigan City v. Opperman, 249 U.S. 448 (1918). For the respondent to maintain otherwise is for her to disregard completely the long-standing practice of this Court as evidenced in the above-cited cases.

CONCLUSION

The petition for a writ of certiorari in this cause was filed within ninety days of the date of the filing of the Court of Appeal's opinion plus the number of days between the date of the filing of the petition to rehear and the order denying the petition to rehear, and it is therefore timely filed, and is entitled to be considered by the Court on its merits.

Further, the brief of the respondent highlights and emphasizes the facts in this case which raise constitutional questions heretofore unanswered by this Court, thereby further demonstrating why the petition for a writ of certiorari should be granted.

Respectfully submitted, this the 25th day of February, 1977.

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